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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 3894 of 2006
Date of decision: 20.9.2007

Devender Kumar **...Petitioner**

Versus

Raja Ram **...Respondent**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. L.N.Verma, Advocate for the petitioner.

Mr. Deepak Manchanda, Advocate for the respondent

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RAJESH BINDAL, J.

The petitioner/landlord is in revision before this Court under Section 15 (6) of the Haryana Urban (Control of Rent Eviction) Act, 1973 (for short "the Act") against the impugned orders, whereby his application for fixing fair rent, was partially dismissed by both the Courts below.

The claim made by the petitioner/landlord was that infact the basic rent, at which the shop in question was let out to the respondent in the year 1981, was Rs. 400/-. The same was being paid regularly till June, 1996. Thereafter, petitioner/landlord filed petition for eviction on the ground of non payment of rent. In that petition, the Rent Controller vide order dated September 19, 1998 assessed the rent at the rate of Rs. 400/- per month for the period from June 11, 1996 to September 10, 1998, which was tendered by the respondent/tenant without any objection or reservation of right regarding refund or adjustment. Meaning thereby that till September, 1998 without there being any dispute having been raised by the respondent/tenant, the rent was being paid at the rate of Rs. 400/-.

On January 19, 1998 petitioner moved an application before the Rent Controller under Section 4 of the Act for fixing the fair rent of the shop keeping in view basic rent as Rs. 400/- per month. The

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respondent/tenant contested the petition claiming that agreed rent is Rs. 250/- per month and fair rent should be determined on the basis thereof. As regards, the rent having been paid by him, for the period from June 11, 1996 to September 10, 1998 at the rate of Rs. 400/- per month, it was submitted that the same was to avoid eviction. The Rent Controller as well as the Appellate Authority accepted the plea raised by the respondent/tenant and fixed the fair rent considering the basic rent as Rs. 250/- per month as against Rs. 400/- per month claimed by the petitioner/landlord. The sole basis for fixing basic rent at Rs. 250/- per month was the evidence of Raja Ram, respondent-tenant.

Having heard learned counsel for the parties, I am of the considered view that the orders passed by both the Courts below are patently illegal and perverse. Once the respondent/tenant did not dispute the rent claimed by the petitioner/landlord, having been fixed at the time of creation of tenancy in an earlier litigation between the parties, nothing lies in the mouth of the respondent/tenant to plead now and state that infact the rent was Rs. 250/- per month and not Rs. 400/- per month, which was accepted and tendered by him in earlier proceedings. It is not the case where the respondent/tenant disputed the rate of rent by filing reply to the earlier petition filed by the respondent/landlord but still tendered the rent at the rate claimed by the petitioner/landlord to avoid his eviction under protest. Rather it was a case of admission. No one can dislodge or put a dent in the admission made by a party to litigation himself.

Accordingly, while accepting the petition filed by the petitioner/landlord, it is ordered that the basic rent shall be considered at Rs. 400/- per month as against Rs. 250/- per month, as determined by both the Courts below and fair rent be fixed accordingly.

The petition is disposed of accordingly.

September 20, 2007 **(Rajesh Bindal)**
Pka **Judge**